IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-276

W. JASON MITAN,

Petitioner,

vs.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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STATEMENT OF THE CASE.

Petition Number 79-276 arises from the judgment of the Supreme Court of Illinois in the case of *In re Mitan*, 75 Ill. 2d 118, 387 N. E. 2d 278, number 50594, entered January 12, 1979. Respondent submits the following in opposition to that Petition.

STATEMENT OF FACTS.

On January 12, 1979, the Supreme Court of Illinois handed down its opinion disbarring Petitioner W. Jason Mitan. The decision of the Court below was based on its finding that Petitioner had made materially false statements on his verified applications for admission to the Illinois bar. Respondent refers this Court to

the opinion of the Court below (attached as Appendix to the Petition).

QUESTIONS PRESENTED.

For the purpose of argument, Respondent will address the questions as raised by Petitioner.

REASONS FOR DENYING THE WRIT.

A. The Right of a State Supreme Court to Discipline Attorneys Is Not Absolute, but Rather Is Subject to Compliance with Due Process Rights.

Petitioner's statement of issue, above, is not helpful in determining whether review is warranted by this Court. Though cast in due process terms, Petitioner's argument is that a thirteen day scheduling error by the Attorney Registration and Disciplinary Commission is an absolute bar precluding the Supreme Court of Illinois from exercising its inherent power to disbar an attorney who obtained his license by fraud and deceit.

This Court has long recognized the authority of the State to regulate its professions. *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 792 (1975). Lawyers have historically been "officers of the court". *See, e.g., In re Primus*, 436 U. S. 412, 422 (1978). In Illinois, the power to discipline an attorney is inherent in the Supreme Court of Illinois. *In re Teitelbaum*, 13 Ill. 2d 586, 150 N. E. 2d 873, *cert. denied*, 358 U. S. 881, *rehearing denied*, 358 U. S. 923 (1958). Disciplinary proceedings are original proceedings in the Supreme Court of Illinois. *In re Taylor*, 66 Ill. 2d 567, 363 N. E. 2d 845 (1977). Further, the Illinois Court has held that technical objections to practice and procedure before the Commission will not bind the Court or limit its authority to act. *In re Czachorski*, 41 Ill. 2d 549, 244 N. E. 2d 164 (1969); *In re Yablunky*, 407 Ill. 111, 94 N. E. 2d 841 (1950).

Fulfilling its duty to uphold constitutionally protected rights, this Court has held that an attorney must be given notice of the charge and an opportunity to defend prior to discipline being imposed. *In re Ruffalo*, 390 U. S. 544 (1968). The Commission's scheduling error below did not deprive Petitioner of notice of the charge or an opportunity to defend.[1]

B. At the Very Least the Due Process Clause Requires That State Courts in Attorney Discipline Cases Abide by and Follow Their Own Promulgated Rules.

Petitioner attempts to mislead this Court by suggesting that the Commission "knowingly and purposely" attempted to deny Petitioner a hearing within the ninety day period. (Petition, p. 12.) The opinion below reflects that the thirteen day delay occurred "becasue of an inadvertent administrative error committed by the Administrator's office." *In re Mitan*, 387 N. E. 2d 278, 280 (1979). *Petitioner* further attempts to mislead this Court by suggesting that he jeopardized his right to defend himself by relying on the Commission rules. The Court below noted that Petitioner's attorney did not stand exclusively on procedural points but objected vigorously to the admission of each item of the Administrator's evidence, and in closing argument dealt extensively with the alleged misconduct itself. 387 N. E. 2d at 279.

Nevertheless, Petitioner argues that after the first complaint was dismissed without prejudice due to the scheduling delay,[2] the Administrator was precluded from refiling the complaint because it had not been voted on again by the Inquiry Board. Petitioner compares the Inquiry Board to the grand jury and a

1. The opinion of the Court below reveals Petitioner was notified of the charges against him (on two occasions), filed responsive pleadings and appeared by his attorney and participated at the hearing.

2. Interestingly, Petitioner prevailed below on one of the questions he now sets up as warranting reversal of his disbarment.

disciplinary complaint to an indictment. The analogies are not valid. The Court of Appeals has held:

> ". . . a clear distinction exists between proceedings whose essence is penal, intended to redress criminal wrongs by imposing sentences of imprisonment, other types of detention or commitment, or fines, and proceedings whose purpose is remedial, intended to protect the integrity of the courts and to safeguard the interests of the public by assuring the continued fitness of attorneys licensed by the jurisdiction to practice law. The former type of proceeding is in actuality 'criminal' in nature . . . ; the latter is not." *In re Daley*, 549 F. 2d 469, 475 (7th Cir. 1977), *cert. denied*, 434 U. S. 829 (1977).

After considering the charges against Petitioner, the Inquiry Board instructed the Administrator to file a complaint against Petitioner. It is not clear what purpose would be served by requiring the Inquiry Board to reconsider the same charges. The Court below stated:

> The purpose of our Rule 753(a) and (b) is to prevent the Administrator from acting solely on his own in an arbitrary or dictatorial manner. The attorney-respondent is given the protection of having to answer charges only when they have been made by a panel of the Inquiry Board which has considered the facts upon which they are based independently of prosecutorial interests of the Administrator. The conduct of the Administrator in this case has not violated or deprived the respondent of his protection. 387 N. E. 2d at 281.

C. Petitioner Was Charged with and Convicted of Violating an Illinois Bar Association Disciplinary Rule Which Prior to This Case Had Been Rendered Unenforceable by the Supreme Court of Illinois.

Although the Code of Professional Responsibility has never been formally adopted by the Illinois Court, the Code constitutes a 'safe guide' for professional conduct. Thus, an attorney may be

disciplined for failing to observe its provisions. *In re Taylor*, 66 Ill. 2d 567, 363 N. E. 2d 845 (1977).

Petitioner neglects to mention that the Illinois Court has long held, as stated below, that concealment of the conviction of a crime on a bar application warrants disbarment. *People ex rel. Healy* v. *Propper*, 220 Ill. 455 (1906); *People ex rel. Deneen* v. *Hahn*, 197 Ill. 137 (1902). Decisions in other jurisdictions are in accord. *Florida Board of Bar Examiners* v. *Lerner*, 250 So. 2d 852 (Fla. 1971); *In re Howe*, 257 N. W. 2d 420 (N. D. 1977); *In re Elliot*, 268 S. C. 522, 235 S. E. 2d 11 (1977).

D. Petitioner's Fifth Amendment Privilege Against Self Incrimination Was Violated.

Petitioner correctly states that the protection of the privilege against self-incrimination may be invoked by an attorney in a disciplinary prosecution and he may not be punished for doing so. *Spevack* v. *Klein*, 385 U. S. 511, 514-516 (1967). However, the opinion below does not reflect that Petitioner ever claimed the privilege. In order for the protection of the privilege to apply, it must be claimed. *United States* v. *Monia*, 317 U. S. 424, 427 (1943). *United States ex rel. Vajtauer* v. *Commission of Immigration*, 273 U. S. 103, 113 (1927).

CONCLUSION.

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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